



GOVERNMENT ACCOUNTABILITY OFFICE

Notice of Estimated Lump Sum Catch-up Payments to Eligible 9/11 Victims, 9/11 Spouses, and 9/11 Dependents; Request for Comment

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Notice of estimated lump sum catch-up payments; request for comment.

SUMMARY: GAO is now accepting comments on estimated potential lump sum catch-up payments to certain 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund. GAO is conducting a review and publishing this notice pursuant to the requirements of the Sudan Claims Resolution Act. Comments should be sent to the email address below.

DATES: Interested persons are invited to submit comments on or before July 12, 2021.

ADDRESSES: Submit comments to FundPaymentComments@gao.gov or in writing to Mr. Charles Michael Johnson, Jr. at 441 G Street NW, Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Charles Michael Johnson, Jr. at (202) 512-7500 or JohnsonCM@gao.gov if you need additional information. For general information, contact GAO's Office of Public Affairs, 202-512-4800.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2021, GAO published a notice (86 FR 16211) of our methodology for estimating certain lump sum catch-up payments. The supplementary information included with the notice explained that, pursuant to

Section 1705 of the Sudan Claims Resolution Act,¹ GAO is conducting a review and publishing notices for estimating potential lump sum catch-up payments to 9/11 victims, 9/11 spouses, and 9/11 dependents² who have eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund (Fund). The Fund, which is administered by a Special Master and supported by Department of Justice (DOJ) personnel,³ was established in 2015 by the Justice for United States Victims of State Sponsored Terrorism Act (Terrorism Act).⁴ In 2019, the United States Victims of State Sponsored Terrorism Fund Clarification Act (Clarification Act) removed language from the Terrorism Act precluding 9/11-related claimants⁵ who received awards from the Victim Compensation Fund (VCF) from receiving payments from the Fund.⁶ However, because 9/11 family members (i.e., immediate family members of 9/11 victims who are not spouses or dependents, such as non-dependent parents and siblings) had not received awards from the VCF, they were not precluded from receiving payments from the

¹Pub. L. 116-260, div. FF, tit. XVII, sec. 1705, 134 Stat. 1182, 3293-3294, amending Pub. L. 114-113, div. O, tit. IV, sec. 404, 129 Stat. 2242, 3010-3011 (classified as amended at 34 U.S.C. 20144(d)(4)(C)).

²See 34 U.S.C. 20144(j)(10)-(14) (defining the terms “9/11 victim,” “9/11 spouse,” and “9/11 dependent,” among others); see also 28 C.F.R. 104.2, 104.3.

³See 34 U.S.C. 20144(b)(1).

⁴Pub. L. 114-113, div. O, tit. IV, sec. 404, 129 Stat. 2242, 3007-3017 (classified as amended at 34 U.S.C. 20144).

⁵“Claimants” hold final judgments issued by a United States district court under State or Federal Law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism. 34 U.S.C. 20144(c)(2). For purposes of the Fund, the term “claim” generally refers to a claim based on compensatory damages awarded to a United States person in a final judgment issued by a United States district court under State or Federal law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism. In general, a claim is determined eligible for payment from the Fund if the Special Master determines that the judgment holder (referred to as a “claimant”) is a United States person, that the claim at issue meets the definition of claim above, and that the claim was submitted timely.

⁶Pub. L. 116-69, div. B, tit. VII, sec. 1701, 133 Stat. 1134, 1140-1141. The VCF provides compensation to those present at the World Trade Center on September 11, 2001, at other crash sites, or in the New York City Exposure Zone, or their personal representative.

Fund if their claims were determined eligible. The first round of payments was distributed in early 2017 and the second round in early 2019.⁷ As of June 2021, the Fund had allocated \$1.075 billion for third-round payments and was in the process of distributing payments on a rolling basis.⁸ According to comments received on our first notice, certain 9/11 victims, spouses, and dependents have worked with members of Congress related to these catch-up payments. While the Terrorism Act, as amended, contains a provision for us to estimate catch-up payments, it does not currently authorize such catch-up payments to be made. The Fund would be responsible for making actual payments if authorized.

Summary of Comments

GAO received a total of 1,925 comments by the closing date of April 26, 2021.⁹ GAO received 1,910 comments from individuals or anonymous commenters and 15 comments from organizations.¹⁰ GAO received about 94 percent of comments by email; the remaining comments were received in voicemails or letters. GAO has carefully considered all comments received. Below is a summary of the types of comments GAO received and GAO's response.

Opposition to Use of Second Round Judgment Date

The great majority of comments received expressed disagreement with the proposed use of September 14, 2018, the close of the application period for the second round of payments, as the date by which claimants must have had a final judgment to be eligible for catch-up payments. Commentators opposing this

⁷The Fund allocated \$1.1 billion for initial-round payments and \$1.095 billion for second-round payments. See U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020).

⁸See id.; U.S. Victims of State Sponsored Terrorism Fund, <http://www.usvsst.com> (last accessed June 1, 2021).

⁹A summary of these comments are captured below; however, some comments fell into multiple categories and are included in all applicable categories.

¹⁰GAO counted comments received multiple times with the same content and sender as one comment.

date raised two consistent arguments for why the date should not be used. First, commentators explained that, because of the statutory bar that was in place at the time of the first and second rounds of payments from the Fund, the majority of otherwise eligible victims, spouses, and dependents did not seek final damages judgments before September 14, 2018, on the advice of counsel. They explained that such claims for damages would have been frivolous and administratively burdensome given the bar to recovery from the Fund. Second, commentators opposing this date also argued that Congress' intent in passing the Sudan Claims Resolution Act was to provide for the estimation of catch-up payments for 9/11 victims, spouses, and dependents who had received payments from the VCF and had not received payments from the Fund in rounds one or two. Commentators said that by using September 14, 2018 as the cut-off date, GAO would exclude most of this population and underestimate the number of individuals eligible for catch-up payments.

GAO Response: GAO's calculation will now include all eligible claimants who are 9/11 victims, spouses, and dependents who submitted applications by February 19, 2020, the deadline for the third round distribution of the Fund.¹¹ We previously limited the population to those 9/11 victims, spouses and dependents who would have been eligible to receive a payment from the Fund in the first or second round but for the language in the Terrorism Act precluding claimants who received awards from the VCF from receiving payments from the Fund. For that reason, we had planned to limit the population to 9/11 victims, spouses and dependents who had eligible final judgments prior to the close of the application

¹¹According to the Fund's June 2020 congressional report, the applications of eligible claimants who applied in rounds one or two are carried forward into subsequent payment rounds. U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020).

period for the second round of payments, September 14, 2018, and therefore would have been eligible for payment by that time.¹² We based this approach on our understanding of the specific procedures for obtaining payments as set forth in the Terrorism Act and described by DOJ officials supporting the Fund.

GAO revised the population for the purposes of this estimation partially in response to the arguments raised by commentators opposed to the September 14, 2018 cut-off date explaining the reasons why eligible claimants generally would not have pursued final judgments by this date. In addition, according to GAO's analysis, the Fund's summary data on the dates of certain claimants' final judgments included only the most recent judgment date. According to the DOJ officials that support the Fund, the summary data on these judgments were compiled for internal purposes and not for the purpose of calculating payments to individual claimants. Instead, the Fund reviews each individual claimant's application and documentation when determining eligibility and payment amounts. The limitations of the Fund's summary data on the date of the claimants' final judgments are discussed further in the data limitations section of this notice.

Request to Use the Fund's Payment Percentage in the First and Second Round

GAO received comments about the use of the Fund's payment percentage for our estimation lump sum catch-up payment.¹³ For example, commentators

¹²As discussed in footnote 5, in general the Fund determines the eligibility of a claim for payment in each round by determining that the claimant holds a final judgment issued by a United States district court under State or Federal Law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism and that the claim was submitted timely.

¹³The Fund's "payment percentage" is the amount of funds available to pay all eligible claimants in a given round divided by compensatory damages after accounting for the individual and family caps, compensation from other sources, and prior payments from the Fund. The payment percentage for the initial round of payments was 13.6561 percent (generally rounded to 13.66 percent in USVSST Fund communications). The payment percentage for the second round of payments is 4.1955 percent (rounded to 4.2 percent in USVSST Fund communications). The payment percentage total for both rounds is 17.8516 percent, rounded here to 17.85 percent. See

suggested that GAO add the payment percentages calculated by the Fund in the first and second rounds to determine the percentage needed for catch-up payments.

GAO Response: The mandate calls for GAO to estimate potential lump sum catch-up payments in “amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the claims of 9/11 family members received from the fund, [as of the date of enactment].”¹⁴ Thus, GAO estimated the amount needed to provide potential lump sum catch-up payments so that these payments to 9/11 victims, spouses, and dependents would represent an equal percentage of their net eligible claims as the amounts received by 9/11 family members. GAO did not combine the Fund’s payment percentages, which were based on payments to all eligible claimants in each round because the mandate calls for GAO to calculate a specific percentage for these catch-up payments that is based on payments to certain 9/11 claimants only.

Methodology to Produce Estimates for Lump Sum Catch-up Payments

To estimate the amount(s) called for in the mandate, GAO used data obtained from the Fund on the following amounts: (1) payments received by 9/11 family members in rounds one and two; (2) net eligible claims¹⁵ of 9/11 family

U.S. Victims of State Sponsored Terrorism Fund, “Payment Calculation Explanation,” at 4 (December 2018).

¹⁴34 U.S.C. 20144(d)(4)(C)(i). Further, section 1705 provides for GAO to conduct this audit in accordance with 34 U.S.C. 20144(d)(3)(A), which generally places limits on the amount of eligible claims (referred to as “statutory caps”). For example, for individuals, the cap is generally \$20,000,000 and for claims of family members when aggregated, the cap is generally \$35,000,000. As such, we used data from the Fund on the claim amounts after the application of statutory caps.

¹⁵For the purposes of our analysis, “net eligible claims” refers to the monetary amount of all eligible claims after the application of relevant statutory caps by the Fund, if applicable. 34 U.S.C. 20144(d)(3)(A). For example, for individuals, the cap is generally \$20,000,000 and for claims of

members who received payments in rounds one and two; and (3) net eligible claims of 9/11 victims, spouses, and dependents who have not received payments in rounds one or two. To calculate the first two amounts, GAO identified the population of claimants who were 9/11 family members and received payments in rounds one and two. GAO divided the payments received by 9/11 family members in rounds one and two by the net eligible claims of 9/11 family members who received payments in rounds one and two to calculate the percentage called for in the mandate. To calculate the third amount, GAO calculated the total net eligible claims of 9/11 victims, spouses and dependents who had not received payments in rounds one or two. GAO multiplied the percentage above by the total net eligible claims of 9/11 victims, spouses, and dependents who submitted eligible applications by the February 19, 2020 deadline for the third round distribution of the Fund.¹⁶ This generated an estimate of the total amount needed to provide lump sum catch-up payments for 9/11 victims, spouses, and dependents.

GAO also calculated the amount needed to provide lump sum catch-up payments by group (i.e., 9/11 victims, spouses, and dependents) utilizing the percentage calculated above.¹⁷ To estimate the average lump sum catch-up

family members when aggregated, the cap is generally \$35,000,000. To calculate the amount of 9/11 family members' net eligible claims, we used rounds one and two data, the rounds in which the family members' payments were received, from the Fund on the claim amounts after the application of statutory caps. To calculate the amount of 9/11 victims, spouses and dependents' net eligible claims, we used round three data from the Fund on the claim amounts after the application of statutory caps.

¹⁶The population for which we are estimating "catch-up payments" are 9/11 victims, spouses, and dependents who applied for payments in the first, second, or third round of payments from the Fund and who did not receive payments from the Fund in rounds one or two. See 34 U.S.C. 20144(c), (d)(4)(C); U.S. Victims of State Sponsored Terrorism Fund, "Special Master Report Regarding the Third Distribution," at 2 (June 2020). According to the Fund's June 2020 congressional report, the applications of eligible claimants who applied in rounds one or two are carried forward into subsequent payment rounds. GAO used the amount of net eligible claims calculated in the third round for 9/11 victims, spouses, and dependents.

¹⁷As noted above, while the Terrorism Act, as amended, contains a provision for us to estimate catch-up payments, it does not currently authorize such catch-up payments to be made

payments by individual for each group in our forthcoming report to Congress, GAO will multiply the net eligible claim of each claimant by the same percentage and then calculate the average catch-up payment for individuals within each group.

Data Limitations

In accordance with GAO standards, we assessed the reliability, accuracy, and completeness of the readily available electronic data DOJ provided from the Fund to ensure that it is appropriate for our purposes. Specifically, we reviewed relevant documentation from the Fund, including data on net eligible claims, judgment dates, and payment distributions across three payment rounds, conducted interviews with agency officials, and checked the data for outliers. Our review of the data found it to be sufficiently reliable for the purposes of estimating potential catch-up payments for eligible claimants.

However, with regard to summary data that the Fund provided on the dates of claimants' final judgments, GAO found limitations with the completeness of this data for the purposes of determining which claimants had final judgments prior to September 14, 2018. According to the DOJ officials that support the Fund, the summary data provided by the Fund on these judgments was compiled for internal purposes and not for the purposes of calculating individual payments to individual claimants. Instead, the Fund reviews each individual claimant's application and documentation when determining eligibility and payment amounts.

The summary data contained information on judgments for each claimant in the third distribution, but for some claimants who had multiple judgments, only the most recent judgment was included as it incorporated the amounts of any prior judgments. For example, a claimant may have received one judgment in

2016 for pain and suffering damages in the amount of \$2 million and then received a second judgment after September 14, 2018, which added an additional \$15 million in economic damages to the previous pain and suffering damages judgment, totaling \$17 million. In that case, DOJ officials supporting the Fund told us that, for their purposes, they only needed to record the most recent judgment and the total amount (in the example about, \$17 million), and thus use of this summary data to determine the population of those eligible for catch-up payments could have resulted in a potential underestimate of eligible claimants. It would not have been practicable for us to conduct a case-by-case review of individual judgments to determine which claimants had multiple judgments, with one prior to the September 14, 2018 date used in our prior notice and one after that date.

Given these limitations, and the arguments raised by commentators opposed to the September 14, 2018 date discussed above, GAO developed a more inclusive estimate that included eligible 9/11 victims, spouses, and dependents from all three payment rounds who did not receive a payment in the first two rounds of the Fund.

Estimates for Lump Sum Catch-up Payments

GAO calculated 3,288 9/11 family members received total payments of \$1,155,264,392 in rounds one and two. The total net eligible claims of these 9/11 family members was \$19,723,494,745. Using these amounts, we calculated the percentage called for in the mandate of 5.8573 percent. We then estimated the 5,364 9/11 victims, spouses, and dependents had total net eligible claims of \$45,287,995,177 and multiplied the 5.8573 percentage to generate \$2,652,653,742, the total amount needed to provide lump sum catch-up payments for 9/11 victims, spouses, and dependents, so that the percentage of

net eligible claims received by 9/11 family members is equal to the percentage of net eligible claims received by the 9/11 victims, spouses, and dependents in the population (see Table 1).

Table 1: Estimated Amount Needed to Provide Lump Sum Catch-Up Payments by Group to Eligible 9/11 Victims, Spouses, and Dependents

Group	Total Amount Needed to Provide Lump Sum Catch-Up Payments
9/11 Victims	\$811,945,396
9/11 Spouses	\$859,813,713
9/11 Dependents	\$980,894,632
Total	\$2,652,653,742

Authority: Pub. L. 116-260, div. FF, tit. XVII, 1705, 134 Stat. 1182, 3293-3294 (34 U.S.C. 20144(d)(4)(C)).

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